

group established under this subchapter shall be considered to be a subcommittee of the applicable State technical committee.

(Pub. L. 99-198, title XII, §1262, as added Pub. L. 101-624, title XIV, §1446, Nov. 28, 1990, 104 Stat. 3604; amended Pub. L. 103-354, title II, §246(f)(3), Oct. 13, 1994, 108 Stat. 3225; Pub. L. 104-127, title III, §342(b), Apr. 4, 1996, 110 Stat. 1009; Pub. L. 110-234, title II, §2711, May 22, 2008, 122 Stat. 1084; Pub. L. 110-246, §4(a), title II, §2711, June 18, 2008, 122 Stat. 1664, 1812.)

#### REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) to (c), was in the original “this title”, meaning title XII of Pub. L. 99-198, which enacted this chapter and former section 2005a of this title and amended sections 590g, 2004, 2005, 2006, and 2009 of this title, sections 4207 and 4209 of Title 7, Agriculture, and provisions set out as a note under section 1981 of Title 7.

The Federal Advisory Committee Act, referred to in subsec. (d), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, which is set out in the Appendix to Title 5, Government Organization and Employees.

#### CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

#### AMENDMENTS

2008—Pub. L. 110-246, §2711, which directed the general amendment of section 1262 of the “Farm Security Act of 1985”, was executed by making the amendment to this section, which is section 1262 of the Food Security Act of 1985, to reflect the probable intent of Congress. Prior to amendment, section consisted of subsecs. (a) to (d) which related to general responsibilities of committees established under section 3861 of this title, wetland and wildlife habitat protection guidelines, provision of assistance and recommendations with respect to enumerated technical aspects, authority of committees, and FACA requirements.

1996—Subsec. (a). Pub. L. 104-127, §342(b)(1), inserted at end “Each State technical committee shall provide public notice of, and permit public attendance at meetings considering, issues of concern related to carrying out this chapter.”

Subsec. (b)(1). Pub. L. 104-127, §342(b)(2), inserted at end “Each State technical committee shall establish criteria and guidelines for evaluating petitions by agricultural producers regarding new conservation practices and systems not already described in field office technical guides.”

Subsec. (c)(7) to (9). Pub. L. 104-127, §342(b)(3), struck out “and” at end of par. (7), added par. (8), and redesignated former par. (8) as (9).

1994—Subsec. (e). Pub. L. 103-354 added subsec. (e).

#### EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

#### PUBLIC NOTICE AND COMMENT FOR REVISIONS TO CERTAIN STATE TECHNICAL GUIDES

Pub. L. 104-127, title III, §343, Apr. 4, 1996, 110 Stat. 1009, provided that: “After the date of enactment of this Act [Apr. 4, 1996], the Secretary of Agriculture shall provide for public notice and comment under section 553 of title 5, United States Code, with regard to any future revisions to those provisions of the Natural Resources Conservation Service State technical guides that are used to carry out subtitles A, B, and C of title

XII of the Food Security Act of 1985 (16 U.S.C. 3801 et seq. [3811 et seq., 3821 et seq.]).”

## CHAPTER 59—WETLANDS RESOURCES

### SUBCHAPTER I—GENERAL PROVISIONS

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### SUBCHAPTER I—GENERAL PROVISIONS

#### § 3901. Findings and statement of purpose

##### (a) Findings

The Congress finds that—

(1) wetlands play an integral role in maintaining the quality of life through material contributions to our national economy, food supply, water supply and quality, flood control, and fish, wildlife, and plant resources, and thus to the health, safety, recreation, and economic well-being of all our citizens of the Nation;

(2) wetlands provide habitat essential for the breeding, spawning, nesting, migration, wintering and ultimate survival of a major portion of the migratory and resident fish and wildlife of the Nation; including migratory birds, endangered species, commercially and recreationally important finfish, shellfish and other aquatic organisms, and contain many unique species and communities of wild plants;

(3) the migratory bird treaty obligations of the Nation with Canada, Mexico, Japan, the Union of Soviet Socialist Republics, and with various countries in the Western Hemisphere require Federal protection of wetlands that are used by migratory birds for breeding, wintering or migration and needed to achieve and to maintain optimum population levels, distributions, and patterns of migration;

(4) wetlands, and the fish, wildlife, and plants dependent on wetlands, provide significant recreational and commercial benefits, including—

(A) contributions to a commercial marine harvest valued at over \$10,000,000,000 annually;

(B) support for a major portion of the Nation's multimillion dollar annual fur and hide harvest; and

(C) fishing, hunting, birdwatching, nature observation and other wetland-related rec-

reational activities that generate billions of dollars annually;

(5) wetlands enhance the water quality and water supply of the Nation by serving as groundwater recharge areas, nutrient traps, and chemical sinks;

(6) wetlands provide a natural means of flood and erosion control by retaining water during periods of high runoff, thereby protecting against loss of life and property;

(7) wetlands constitute only a small percentage of the land area of the United States, are estimated to have been reduced by half in the contiguous States since the founding of our Nation, and continue to disappear by hundreds of thousands of acres each year;

(8) certain activities of the Federal Government have inappropriately altered or assisted in the alteration of wetlands, thereby unnecessarily stimulating and accelerating the loss of these valuable resources and the environmental and economic benefits that they provide; and

(9) the existing Federal, State, and private cooperation in wetlands conservation should be strengthened in order to minimize further losses of these valuable areas and to assure their management in the public interest for this and future generations.

#### (b) Purpose

It is the purpose of this chapter to promote, in concert with other Federal and State statutes and programs, the conservation of the wetlands of the Nation in order to maintain the public benefits they provide and to help fulfill international obligations contained in various migratory bird treaties and conventions with Canada, Mexico, Japan, the Union of Soviet Socialist Republics, and with various countries in the Western Hemisphere by—

(1) intensifying cooperative efforts among private interests and local, State, and Federal governments for the management and conservation of wetlands; and

(2) intensifying efforts to protect the wetlands of the Nation through acquisition in fee, easements or other interests and methods by local, State, and Federal governments and the private sector.

(Pub. L. 99-645, §2, Nov. 10, 1986, 100 Stat. 3582.)

#### REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original “this Act”, meaning Pub. L. 99-645, Nov. 10, 1986, 100 Stat. 3582, known as the Emergency Wetlands Resources Act of 1986. For complete classification of this Act to the Code, see Short Title note below and Tables.

#### SHORT TITLE

Pub. L. 99-645, §1, Nov. 10, 1986, 100 Stat. 3582, provided that: “This Act [enacting this chapter, amending sections 460l-3, 460l-9, 707, 715k-3, 715k-5, and 718b of this title, and enacting a provision set out in the table under section 668dd of this title] may be cited as the ‘Emergency Wetlands Resources Act of 1986’.”

#### § 3902. Definitions

For the purpose of this chapter:

(1) The term “Committees” means the Committee on Merchant Marine and Fisheries and

the Committee on Natural Resources of the House of Representatives and the Committee on Environment and Public Works and the Committee on Energy and Natural Resources of the Senate.

(2) The term “designated unit” means a unit of the National Wildlife Refuge System designated by the Secretary under section 3911(a)(2)<sup>1</sup> of this title.

(3) The term “hydric soil” means soil that, in its undrained condition, is saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation.

(4) The term “hydrophytic vegetation” means a plant growing in—

(A) water; or

(B) a substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content.

(5) The term “wetland” means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(Pub. L. 99-645, §3, Nov. 10, 1986, 100 Stat. 3583; Pub. L. 103-437, §6(d)(41), Nov. 2, 1994, 108 Stat. 4585.)

#### REFERENCES IN TEXT

Section 3911 of this title, referred to in par. (2), was repealed by Pub. L. 108-447, div. J, title VIII, §813(c), Dec. 8, 2004, 118 Stat. 3390.

#### AMENDMENTS

1994—Par. (1). Pub. L. 103-437 substituted “Natural Resources” for “Interior and Insular Affairs” after “Committee on”.

#### ABOLITION OF HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES

Committee on Merchant Marine and Fisheries of House of Representatives abolished and its jurisdiction transferred by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995. Committee on Merchant Marine and Fisheries of House of Representatives treated as referring to Committee on Resources of House of Representatives in case of provisions relating to fisheries, wildlife, international fishing agreements, marine affairs (including coastal zone management) except for measures relating to oil and other pollution of navigable waters, or oceanography by section 1(b)(3) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Resources of House of Representatives changed to Committee on Natural Resources of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

#### SUBCHAPTER II—REVENUES FOR REFUGE OPERATIONS AND THE MIGRATORY BIRD CONSERVATION FUND

#### § 3911. Repealed. Pub. L. 108-447, div. J, title VIII, § 813(c), Dec. 8, 2004, 118 Stat. 3390

Section, Pub. L. 99-645, title II, §201, Nov. 10, 1986, 100 Stat. 3584, related to the sale of admission permits at certain units of the National Wildlife Refuge System.

<sup>1</sup> See References in Text note below.

### § 3912. Transfers to Migratory Bird Conservation Fund

Notwithstanding any other provision of law, an amount equal to the amount of all import duties collected on arms and ammunition, as specified in chapter 93 of the Harmonized Tariff Schedule of the United States, shall, beginning with the next fiscal year quarter after November 10, 1986, be paid quarterly into the migratory bird conservation fund<sup>1</sup> established under section 718d of this title.

(Pub. L. 99-645, title II, §203, Nov. 10, 1986, 100 Stat. 3586; Pub. L. 100-418, title I, §1214(f), Aug. 23, 1988, 102 Stat. 1156.)

#### REFERENCES IN TEXT

The Harmonized Tariff Schedule of the United States, referred to in text, is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of Title 19, Customs Duties.

#### AMENDMENTS

1988—Pub. L. 100-418 substituted “chapter 93 of the Harmonized Tariff Schedule of the United States” for “subpart A of part 5 of schedule 7 of the Tariff Schedules of the United States”.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-418 effective Jan. 1, 1989, and applicable with respect to articles entered on or after such date, see section 1217(b)(1) of Pub. L. 100-418, set out as an Effective Date note under section 3001 of Title 19, Customs Duties.

### SUBCHAPTER III—STATE AND FEDERAL WETLANDS ACQUISITION

### § 3921. National wetlands priority conservation plan

#### (a) In general

The Secretary shall establish, and periodically review and revise, a national wetlands priority conservation plan which shall specify, on a region-by-region basis or other basis considered appropriate by the Secretary, the types of wetlands and interests in wetlands which should be given priority with respect to Federal and State acquisition.

#### (b) Consultation

The Secretary shall establish the plan required by subsection (a) of this section after consultation with—

- (1) the Administrator of the Environmental Protection Agency;
- (2) the Secretary of Commerce;
- (3) the Secretary of Agriculture; and
- (4) (the chief executive officer of) each State.

#### (c) Factors to be considered

The Secretary, in establishing the plan required by subsection (a) of this section, shall consider—

- (1) the estimated proportion remaining of the respective types of wetlands which existed at the time of European settlement;
- (2) the estimated current rate of loss and the threat of future losses of the respective types of wetlands; and
- (3) the contributions of the respective types of wetlands to—

(A) wildlife, including endangered and threatened species, migratory birds, and resident species;

(B) commercial and sport fisheries;

(C) surface and ground water quality and quantity, and flood control;

(D) outdoor recreation; and

(E) other areas or concerns the Secretary considers appropriate.

(Pub. L. 99-645, title III, §301, Nov. 10, 1986, 100 Stat. 3586.)

### § 3922. Federal acquisition

The Secretary is authorized to purchase wetlands or interests in wetlands, which are not acquired under the authority of the Migratory Bird Conservation Act of 1929 (16 U.S.C. 715-715s), consistent with the wetlands priority conservation plan established under section 3921 of this title.

(Pub. L. 99-645, title III, §304, Nov. 10, 1986, 100 Stat. 3588.)

#### REFERENCES IN TEXT

The Migratory Bird Conservation Act of 1929, referred to in text, is act Feb. 18, 1929, ch. 257, 45 Stat. 1222, as amended, which is classified generally to subchapter III (§715 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 715 of this title and Tables.

### § 3923. Restriction on use of eminent domain in acquisitions

The powers of condemnation or eminent domain shall not be used in the acquisition of wetlands under any provision of this chapter where such wetlands have been constructed for the purpose of farming or ranching, or result from conservation activities associated with farming or ranching.

(Pub. L. 99-645, title III, §305, Nov. 10, 1986, 100 Stat. 3588.)

#### REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 99-645, Nov. 10, 1986, 100 Stat. 3582, known as the Emergency Wetlands Resources Act of 1986. For complete classification of this Act to the Code, see Short Title note set out under section 3901 of this title and Tables.

### SUBCHAPTER IV—WETLANDS INVENTORY AND TREND ANALYSIS

### § 3931. National wetlands inventory project

#### (a) In general

The Secretary, acting through the Director of the United States Fish and Wildlife Service, shall continue the National Wetlands Inventory Project and shall—

- (1) produce, by September 30, 1988, National Wetlands Inventory maps for the areas that have been identified by the Service as top priorities for mapping, including—

(A) the entire coastal zone of the United States;

(B) floodplains of major rivers; and

(C) the Prairie Pothole region;

- (2) produce, by September 30, 1998, National Wetlands Inventory maps for those portions of

<sup>1</sup> So in original. Probably should be capitalized.

the contiguous United States for which final maps have not been produced earlier;

(3) produce, by September 30, 2000, National Wetlands Inventory maps for Alaska and other noncontiguous portions of the United States;

(4) produce, by September 30, 1990, and at ten-year intervals thereafter, reports to update and improve the information contained in the report dated September 1982 and entitled “Status and Trends of Wetlands and Deep-water Habitat in the Coterminous United States, 1950’s to 1970’s”;

(5) produce, by April 30, 1990, a report that provides—

(A) an assessment of the estimated total number of acres of wetland habitat as of the 1780’s in the areas that now comprise each State; and

(B) an assessment of the estimated total number of acres of wetlands in each State as of the 1980’s, and the percentage of loss of wetlands in each State between the 1780’s and the 1980’s;

(6) produce, by September 30, 2004, a digital wetlands data base for the United States based on the final wetlands maps produced under this section; and

(7) archive and make available for dissemination wetlands data and maps digitized under this section as such data and maps become available.

#### (b) Notice

The Secretary shall notify the appropriate State and local units of government at such time as he proposes to begin map preparation under subsection (a) of this section in an area. Such notice shall include, but is not limited to, the identification of the area to be mapped, the proposed schedule for completion, and the identification of a source for further information.

(Pub. L. 99-645, title IV, § 401, Nov. 10, 1986, 100 Stat. 3588; Pub. L. 101-233, § 18, Dec. 13, 1989, 103 Stat. 1978; Pub. L. 102-440, title III, § 305, Oct. 23, 1992, 106 Stat. 2235.)

#### AMENDMENTS

1992—Subsec. (a)(3). Pub. L. 102-440, § 305(1), substituted “by September 30, 2000” for “as soon as practicable”.

Subsec. (a)(4). Pub. L. 102-440, § 305(2), which directed amendment of par. (4) by substituting a semicolon for “. And”, was executed by making the substitution for “. and”, to reflect the probable intent of Congress.

Subsec. (a)(6), (7). Pub. L. 102-440, § 305(3), (4), added pars. (6) and (7).

1989—Subsec. (a)(5). Pub. L. 101-233 added par. (5).

### § 3932. Reports to Congress

#### (a) In general

The Secretary, in consultation and cooperation with the Secretary of Agriculture, shall prepare and submit to the committees—

(1) by March 30, 1987, a report regarding the status, condition, and trends of wetlands in the lower Mississippi alluvial plain and the prairie pothole regions of the United States; and

(2) by September 30, 1987, a report regarding trends of wetlands in all other areas of the United States.

#### (b) Contents of reports

The reports required under subsection (a) of this section shall contain—

(1) an analysis of the factors responsible for wetlands destruction, degradation, protection and enhancement;

(2) a compilation and analysis of Federal statutory and regulatory mechanisms, including expenditures, financial assistance, and tax provisions which—

(A) induce wetlands destruction or degradation; or

(B) protect or enhance wetlands;

(3) a compilation and analysis of Federal expenditures resulting from wetlands destruction, degradation, protection or enhancement;

(4) an analysis of public and private patterns of ownership of wetlands;

(5) an analysis of the environmental and economic impact of eliminating or restricting future Federal expenditures and financial assistance, whether direct or indirect, which have the effect of encouraging the destruction, degradation, protection or enhancement of wetlands, including—

(A) public works expenditures;

(B) assistance programs such as price support programs, commodity loans and purchase programs and disaster assistance programs;

(C) soil conservation programs; and

(D) certain income tax provisions;

(6) an analysis of the environmental and economic impact of failure to restrict future Federal expenditures, financial assistance, and tax provisions which have the effect of encouraging the destruction, degradation, protection or enhancement of wetlands, including—

(A) assistance for normal silviculture activity (such as plowing, seeding, planting, cultivating, minor drainage, or harvesting for the production of fiber or forest products);

(B) Federal expenditures required incident to studies, evaluations, design, construction, operation, maintenance, or rehabilitation of Federal water resource development activities, including channel improvements;

(C) the commodity loans and purchases program and cotton, feed grain, wheat, and rice production stabilization programs administered by the Department of Agriculture; and

(D) Federal expenditures for the construction of publicly owned or publicly operated highways, roads, structures, or facilities that are essential links in a larger network or system; and

(7) recommendations for the conservation of wetlands resources based on an evaluation and comparison of all management alternatives, and combinations of management alternatives, such as State and local actions, Federal actions, and initiatives by private organizations and individuals.

(Pub. L. 99-645, title IV, § 402, Nov. 10, 1986, 100 Stat. 3589.)

### CHAPTER 59A—WETLANDS

Sec.

3951.

Definitions.